Filed 12/12/16 Pt. San Pedro Road Coalition v. County of Marin CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

POINT SAN PEDRO ROAD COALITION, Plaintiff and Appellant, v. COUNTY OF MARIN, et al., Defendants and Respondents, SAN RAFAEL ROCK QUARRY, INC., Real Party in Interest and Respondent.	A142073 (Marin County Super. Ct. No. CIV1304187)

Appellant Point San Pedro Road Coalition (the Coalition) appeals from an April 25, 2014, order which dismissed its petition for a writ of administrative mandate for failure to exhaust administrative remedies before seeking judicial relief.[1] The Coalition asks us to reverse the April 25, 2014 order and remand the matter to the superior court with directions to reinstate the proceeding. Respondents Marin County and its Board of Supervisors (the County) and San Rafael Rock Quarry, Inc. (the Quarry) have filed a joint motion to dismiss the appeal on the ground that the underlying proceeding, as well as the appeal, has been rendered moot due to the passage of time and the subsequent acts

[1] Despite the absence of a separate formal judgment, the order dismissing the petition for a writ of administrative mandate "constitutes a final judgment for purposes of an appeal." (*Public Defenders' Organization v. County of Riverside* (2003) 106 Cal.App.4th 1403, 1409.)

of the parties, and exceptions to the mootness doctrine do not justify retaining this appeal. The Coalition opposes dismissal, arguing that we can grant it effective relief on its appeal, and even if the appeal is moot, we should exercise our discretion to resolve the appeal on its merits. For the reasons we now explain, we conclude that, due to the passage of time and no fault of the Coalition, the underlying proceeding, as well as the appeal, have been rendered moot. We further conclude the proper remedy is to reverse the April 25, 2014, order, and remand the matter to the superior court with directions to that court to dismiss the proceeding on the ground of mootness.

FACTUAL AND PROCEDURAL BACKGROUND

In 2010, the County issued a mining and quarry permit to the Quarry. The 2010 permit authorized surface mining operations and quarrying activities, subject to 172 conditions, including a prohibition against the importation of asphalt grindings. Three years later, in July 2013, the Quarry requested an amendment to its mining permit to include a condition allowing the Quarry to import asphalt grindings (hereinafter referred to as Amendment No. 2). By its Resolution No. 2013-52, the County approved Amendment No. 2, for two years with an expiration date of October 1, 2015, unless the County acted to extend the expiration date.

On October 10, 2013, the Coalition filed a verified petition seeking issuance of a writ of administrative mandate ordering the County to immediately vacate its Resolution No. 2013-52, and for costs and attorney fees. On April 25, 2014, the superior court entered an order, granting respondents' joint motion for judgment on the pleadings and dismissing the proceeding. The court found it lacked jurisdiction to reach the merits of the petition because the Coalition failed to exhaust its administrative remedies by filing an administrative appeal with the State Mining and Geology Board (the Mining Board) before seeking judicial relief. The Coalition timely appealed from the April 25, 2014, order.

Thereafter, while the Coalition's appeal was pending, the Quarry filed an application in July 2015 to extend the expiration of Amendment No. 2. By its Resolution No. 2015-108, the County approved the extension of the expiration of Amendment No. 2,

to October 1, 2017, "unless there is a ruling from the Appellate Court upholding the trial court's decision allowing the Quarry to continue grindings importation, then, subject to review by the Director of Public Works finding that the Quarry is in good standing with the Surface Mining and Quarrying permit, the . . . Amendment [No.] 2 shall expire on October 1, 2019."

Taking heed of the superior court order now under review, the Coalition filed an administrative appeal with the Mining Board challenging County Resolution No. 2015-108. Within fifteen days, the Mining Board denied the Coalition's appeal and so informed the parties.[2] Subsequently, on December 10, 2015, the Coalition filed a new verified petition in the superior court seeking issuance of a writ of administrative mandate ordering the County to immediately vacate its Resolution No. 2015-108, and for costs and attorney fees.[3] In its new petition, the Coalition challenged County Resolution No. 2015-108, on the same grounds as it challenged the now expired County Resolution No. 2013-52. Additionally, the Coalition alleged it exhausted its administrative remedies by pursuing an unsuccessful appeal with the Mining Board before filing its new petition.

On February 22, 2016, respondents filed a joint motion to dismiss this appeal, which was opposed by the Coalition. We deferred consideration of the motion to dismiss until this time.

DISCUSSION

"It is settled that 'the duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgement of a [superior] court, and

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[2] The Coalition requests that we take judicial notice of the Mining Board's October 12, 2015, denial of the Coalition's administrative appeal. In the absence of any opposition, we grant the request for judicial notice.

[3] Respondents request that we take judicial notice of the Coalition's December 10, 2015, verified petition for writ of administrative mandate filed in the superior court. In the absence of any opposition, we grant the request for judicial notice.

without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal. [Citations.]' [Citation.]" (*Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129, 132 (*Paul*).)

Initially, we conclude the underlying proceeding, as well as the appeal, are moot because "[i]n the present status of the case before us there is neither any 'actual controversy' upon which a judgment could operate nor 'effectual relief' " that can be granted to the Coalition. (*Paul, supra,* 62 Cal.2d at p. 132.) As noted, in its verified petition, filed on October 10, 2013, the Coalition sought issuance of a writ of administrative mandate ordering the County to immediately vacate its Resolution No. 2013-52, and for attorney fees and costs. However, the substantive requested relief is unnecessary. Due to the passage of time, County Resolution No. 2013-52, which approved Amendment No. 2 for a two-year period, expired on October 1, 2015. Thus, County Resolution No. 2013-52 is no longer effective. The fact that the Coalition also requested costs and fees in its petition "does not affect" our conclusion that the underlying proceeding, as well as the appeal, have been rendered moot. (See *Paul, supra,* 62 Cal.2d at p. 134 ["[i]t is settled that an appeal will not be retained solely to decide the question of liability for costs"].)

We decline the Coalition's suggestion that we retain its appeal and address its appellate argument challenging the dismissal of the underlying proceeding for failure to exhaust administrative remedies. "[W]e may, in appropriate circumstances, exercise our discretion to retain and decide an issue which is technically moot. [Citation.] We do so when the issue is of substantial and continuing public interest. [Citation.] Such a resolution is particularly appropriate when the issue is 'presented in the context of a controversy so short-lived as to evade normal appellate review' [citations], or when it is likely to affect the future rights of the parties [citation]." (*Chantiles v. Lake Forest II Master Homeowners Assn.* (1995) 37 Cal.App.4th 914, 921.) This appeal does not present an issue of continuing public interest and importance that is likely to recur but evade normal appellate review. Nor do we see any reason to exercise our discretion to

address the Coalition's appellate arguments at this time. This is especially so since the issue of exhaustion of administrative remedies to be decided on this appeal will not again arise between the parties. At the superior court hearing on respondents' motion for judgment on the pleadings, the Quarry's counsel acknowledged that if the Coalition filed an administrative appeal with the Mining Board and the Mining Board denied the appeal, the Coalition would be free to pursue judicial remedies challenging Amendment No. 2. Following issuance of the superior court's April 25, 2014, order, the Coalition took the preemptive action of pursuing an unsuccessful administrative appeal with the Mining Board, thereby exhausting its administrative remedies, before filing its new petition challenging Amendment No. 2, as extended by Resolution No. 2015-108. Thus, even if we were to agree with the Coalition and reverse the April 25, 2014, order on the merits, the Coalition would be in the same position as it is now. To achieve any substantive relief, the Coalition will be required to pursue its judicial remedies based on its verified petition challenging County Resolution No. 2015-108, which is currently pending in the superior court.

Lastly, "[i]t remains to determine the proper disposition of this matter. Ordinarily, of course, when a case becomes moot pending an appellate decision 'the court will not proceed to a formal judgment, but will dismiss the appeal.' [Citation.]" (*Paul, supra,* 62 Cal.2d at p. 134; see *La Mirada Avenue Neighborhood Assn. of Hollywood v. City of Los Angeles* (2016) 2 Cal.App.5th 586, 591.) However, in this case the underlying proceeding has been rendered moot by the expiration of County Resolution No. 2013-52. Additionally, dismissal of the appeal would have the implied effect of affirming the April 25, 2014, order, without our having reached the merits. Accordingly, under these circumstances, we deem it appropriate to dispose of the underlying proceeding, and " 'not merely of the appellate proceeding which brought it here.' [Citations.] That result can be achieved by reversing the [April 25, 2014, order] solely for the purpose of restoring the matter to the jurisdiction of the superior court, with directions to the court to dismiss the proceeding. [Citations.] Such a reversal, of course, does not imply approval of a contrary [order], but is merely a procedural step necessary to a proper disposition of this

case." (*Paul, supra*, 62 Cal.2d at pp. 134-135; see *Coalition for a Sustainable Future in Yucaipa v. City of Yucaipa* (2011) 198 Cal.App.4th 939, 944-945 [accord].)[4]

DISPOSITION

The April 25, 2014, order is reversed. The matter is remanded to the superior court with directions to dismiss the proceeding on the ground of mootness. Each party shall bear its own costs on appeal.

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Jenkins, J.

We concur:

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McGuiness, P. J.

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Siggins, J.

[4] We note the Coalition requested oral argument in response to a notice sent by the court's clerk, as a matter of course, when an appeal is fully briefed. A party's right to oral argument exists in any appeal considered on the merits and decided by written opinion. (See *Moles v. Regents of University of California* (1982) 32 Cal.3d 867, 871; accord *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1255.) However, the Coalition has no right of oral argument as we have resolved this matter without addressing the merits, based on respondents' motion to dismiss, and the opposition filed thereto. (Cf. Cal. Rules of Court, rule 8.54 (b)(2) ["[o]n a party's request or its own motion, the court may place a motion on calendar for a hearing"].) In all events, we conclude oral argument is not necessary for our disposition of the appeal.